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CONSERVANCY DISTRICT—PURPOSES OF ORGANIZATION COMPLETELY FULFILLED — EXCEPTION — MAINTENANCE AND OCCASIONAL OPERATION OF PUMPING STATIONS AND FLOOD GATES—DISTRICT AND CITY MAY LEGALLY CONCLUDE AGREEMENT TO CONVEY CERTAIN LANDS TO CITY FOR RECREATION PURPOSES — CONSIDERATION — CITY TO ASSUME FUTURE MAINTENANCE AND OPERATION OF PUMPING PLANTS AND FLOOD GATES.

SYLLABUS:

When the purposes for which a conservancy district has been organized have been completely fulfilled, with the exception of the maintenance and occasional operation of pumping stations and flood gates, an agreement may be legally concluded between the district and a city whereby certain lands of the district are conveyed to the city for recreation purposes in consideration for the city's assumption of the future maintenance and operation of said pumping plants and flood gates.

Columbus, Ohio, January 5, 1953

Massillon Conservancy District
Massillon, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"The Massillon Conservancy District was created for two purposes: one, for flood control by straightening the course of the Tuscarawas River through the City of Massillon and, two, for the purpose of grade elimination by the construction of three viaducts upon Lincoln Way West, Tremont Avenue S.W., and Cherry Road N.W., together with various incidental things in connection therewith.

"Channel improvement contemplated involved the construction of embankments on each side of the new channel to protect the city from floods at times of high water. In this connection four pumping stations were provided to pump the city's accumulation of flood waters back to the embankments, over the same, upon such occasions as the height of the water in the channel proper, would not permit gravity drainage into the embankment channel.

"All construction work has now been completed as contemplated in the District's plan and the purposes of the District have been completely fulfilled with the exception of the maintenance and occasional operation of the pumping stations and flood gates at times of extreme high water.

"Prior to disbanding the District it is proposed that the District convey to the City of Massillon, for recreational purposes, certain lands now owned by the District, in consideration for which the City of Massillon will assume the future maintenance of said pumping plants and flood gates for the handling of the accumulating storm waters of the city in times of extreme flood.

"In your opinion can such an agreement be legally concluded between the District and the City of Massillon."

This request presents but two problems: first, whether the Massillon Conservancy District may convey real property; and second, whether it may enter into an agreement with the City of Massillon to perform some of its functions.

The Massillon Conservancy District was organized under the authority of the "Conservancy Act of Ohio" (Sections 6828-1 to 6828-78, General Code.) Section 6828-2, General Code, provides that such a district may be organized for the following purposes:

- "(a) of preventing floods;
- "(b) of regulating stream channels by changing, widening and deepening (deepening) the same;
- "(c) of reclaiming or of filling wet and overflowed lands;
- "(d) of providing for irrigation where it may be needed;
- "(e) of regulating the flow of streams and conserving the waters thereof;
- "(f) of diverting, or in whole or in part eliminating water courses;
- "(g) of providing a water supply for domestic, industrial, and public use;
- "(h) of providing for the collection and disposal of sewage and other liquid wastes produced within the district;
- "(i) of arresting erosion along the Ohio shore line of Lake Erie. * * *

"Subject to the provisions of this section, the purposes of a conservancy district may be altered by the same procedure as provided for the establishment of such a district."

Section 6828-3, General Code, provides for the creation of the District, by filing a petition with the clerk of the common pleas court of a county

containing a portion of the territory sought to be included within the proposed district, setting forth, among other things :

“* * * Second: The necessity for the proposed work and that it will be conducive to the public health, safety, convenience or welfare. * * *

“Fourth: Said petition shall pray for the organization of the district by the name proposed.”

Section 6828-6, General Code, provides for a hearing and reads in part, as follows :

“Upon the said hearing, if it shall appear that the purposes of this chapter would be subserved by the creation of a conservancy district, the court shall, after disposing of all objections as justice and equity require, by its findings, duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of Ohio, a body corporate with all the powers of a corporation, shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested.”

Section 6828-15, General Code, provides in part :

“In order to accomplish the purposes of the district, the board of directors is authorized and empowered :

“(c) To construct, acquire, operate, and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetment, reservoirs, holding basins, floodways, wells, intakes, pipe lines, purification works, treatment and disposal works, pumping stations and siphons, and any other works and improvements deemed necessary to accomplish the purposes of the district or to construct, preserve, operate or maintain such works in or out of said district. Provided that this chapter shall not limit the authority of public corporations to install, maintain and operate sewerage systems and water works systems as otherwise permitted by law; but the board of directors of the district shall have full power to require the use of the improvements, constructed or acquired by the district for the purpose of water supply or the collection and disposal of sewage and other liquid wastes, by the public corporations and persons, within the district, for which such improvements were installed. * * *

“(k) To hold, encumber, control, acquire by donation, purchase or condemnation, construct, own lease, use and *sell* real and personal property, and any easement, riparian right, railroad right of way, canal, cemetery, sluice, reservoir, holding basin, mill dam, water power, wharf, or franchise in or out of said district for right of way, holding basin, location or protection of works and improvements, relocation of communities and of buildings, structures and improvements situated on lands required by the district, or for any other necessary purpose, or for obtaining or storing material to be used in constructing and maintaining said works and improvements. * * *

“(n) *And to do all things necessary or incident to the fulfillment of the purposes for which the district is established.*”
(Emphasis added.)

From your request, it may be noted that :

“The Massillon Conservancy District was created for two purposes: One, for flood control, by straightening the course of the Tuscarawas River through the city of Massillon, and two, for the purpose of grade elimination by the construction of three viaducts upon Lincoln Way West, Tremont Avenue S.W., and Cherry Road N.W., together with various incidental things in connection therewith.”

As stated at the outset of this opinion, the first problem presented by your request is whether the District may convey its real property. I think it clear that the Conservancy District is granted by Section 6828-15, General Code, power to sell real property owned by it when such conveyance is designed “to accomplish the purposes of the District.” Since you state in your letter to me that “all construction work has now been completed as contemplated in the District’s plan and the *purposes* of the District *have been completely fulfilled* with the exception of the maintenance and occasional operation of the pumping stations and flood gates at times of extreme high water,” and since the consideration for the proposed conveyance is to provide for the maintenance and operation of the pumping plants and flood gates, it is apparent that the conveyance is contemplated “in order to accomplish the purposes of the District.”

This conclusion is not in conflict with the result reached by one of my predecessors in Opinion No. 1812, Opinions of the Attorney General for 1940, page 123. In that opinion at page 129, he stated in part, as follows :

“In Section 6828-15, General Code, we find that the district is granted the power to sell real or personal property owned by it; however, such power is granted only ‘In order to accomplish

the purposes of the district.' Is the conveyance of the fee title to all of the lands by the district to the United States Government for flood control purposes the accomplishment of the *purposes* of the district? When we examine the journal entry which created the district we see that the *purposes* for which the district was created are, in addition to the prevention of floods, the conserving flood waters for beneficial uses, regulating stream channels, reclaiming wet and overflowed lands; providing irrigation, regulating the flow of streams, the diversion or elimination of streams, forestation, and prevention of soil erosion.

"The court, in authorizing the district, found that it was a public necessity for the district to be created for the purposes and with the powers above described; that public safety, health, convenience and welfare would be promoted by the creation of such district."

This opinion further stated at page 130:

"If the district were to convey its entire interest in the lands which it has acquired, to the United States to be used for flood control purposes, and the Federal Government would thereupon perform, carry out and maintain thereon the plans for flood control purposes which the district has contemplated performing and maintaining thereon, then it might be urged with some degree of credence that by virtue of the agreement under which the district made the conveyance the purpose of the district with reference to flood control was being accomplished by it; however, it, by such conveyance, *would render itself impotent to accomplish the other purposes* for which it was created." (Emphasis added.)

Thus we see that in the 1940 opinion quoted in part above, the Muskingum Watershed Conservancy District was held not authorized to convey its lands to the Federal Government under an agreement which would have provided for the carrying out of *only one* of the district's purposes and would have rendered the district incapable of carrying out *its other purposes*. From your letter, it is obvious that situation does not exist in this instance as all of the purposes of the Massillon Conservancy District have been fulfilled, with the exception of those to be accomplished by the proposed agreement of conveyance. It can therefore be seen that the reasoning of my predecessor's opinion has no application to your situation.

There remains, then, to be resolved the problem as to whether the District may enter into an agreement with the City of Massillon providing for that city to perform some of the functions of the District. Section 6828-23, General Code, provides in part as follows:

"The board of directors shall also have the right and authority

to *enter into contracts or other arrangements* with the United States government or any department thereof, with persons, railroads or other corporations, *with public corporations*, and the state government of this or other states, with drainage, conservation, conservancy, sewer, park, or other improvement districts, in this or other states, for cooperation or *assistance* (not in violation of Article VIII of the constitution) in constructing, *maintaining, using and operating the works* of the district, the waters thereof, or the parks parkways, forests, *and recreational facilities thereof, * * *.*" (Emphasis added.)

Clearly, the foregoing statute authorizes a conservancy district to enter into a contract or agreement with a city. And it is equally clear that such a district may enter into such an agreement to obtain assistance in the maintenance and operation of its works.

Since the district has the right to convey its property, and since the district has the right to enter into agreements with the City of Massillon for the purpose of providing for the maintenance and operation of the district's works, it follows that the district may convey its property to the city for recreational purposes, and in consideration thereof obtain the agreement of the city to maintain and operate pumping plants and flood gates which might otherwise have to be maintained and operated by the district. Inasmuch as all the purposes for which the district was organized have been fulfilled with the exception of this maintenance and operation, it seems wholly within the letter and spirit of the "Conservancy Act of Ohio" for the directors of the district to enter into such an agreement to bring about the complete "fulfillment of the purposes for which the district is established" if said directors deem such course to be proper in other respects.

In specific answer to your question, it is my opinion that when the purposes for which a conservancy district has been organized have been completely fulfilled, with the exception of the maintenance and occasional operation of pumping stations and flood gates, an agreement may be legally concluded between the district and a city whereby certain lands of the district are conveyed to the city for recreation purposes in consideration for the city's assumption of the future maintenance and operation of said pumping plants and floods gates.

Respectfully,

C. WILLIAM O'NEILL

Attorney General